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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/941,542	08/29/2001	Noman F. Kane	60158-143	7036
26096	7590	10/08/2003		
CARLSON, GASKEY & OLDS, P.C. 400 WEST MAPLE ROAD SUITE 350 BIRMINGHAM, MI 48009				
			EXAMINER NGUYEN, THUKHANH T	
			ART UNIT 1722	PAPER NUMBER

DATE MAILED: 10/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/941,542

Applicant(s)

KANE, NOMAN F.

Examiner

Thu Khanh T. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 15-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-12 and 14 is/are rejected.
- 7) ☐ Claim(s) 5 and 13 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of group 1, claims 1-14 in Paper No. 4 is acknowledged.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4, 6-8, 10, 12 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Usui (4,080,141).

Usui teaches an apparatus for bending flexible pipe, comprising a channel (362, 372) having a curved cross-section, a tubing section (1) inserted into the channel, wherein the track assembly further includes a securing feature to secure the tubing in the channel, wherein the securing feature is a pair of opposing flanges (362, 372) curved in opposing directions and contacts approximately 180° of the tubing, wherein the tubing being set by heating and rapid quenching (col. 6, lines 35-36).

In regard to claims 3-4 and 12, because the pipe is flexible and elastic, it should have a flexed dimension and non-flexed dimension. However, the dimension of the pipe have little or no weight in determine the patentability of the track system. "Expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining patentability of the apparatus claim." Ex parte Thibault, 164 USPQ 666, 667 (Bd. App. 1969). Furthermore, "[i]nclusion of material or article

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worked upon by a structure being claimed does not impart patentability to the claims.” In re Young, 75 F.2d 966, 25 USPQ 69 (CCPA 1935) (as restated in In re Otto, 312 F.2d 937, 136 USPQ 458, 459 (CCPA 1963)).

4. Claims 1-4, 6-12 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Crupi (4,747,768).

Crupi discloses an apparatus for manufacturing shaped tubular articles of softened plastics, comprising a channel (11) having a curved cross section and an interior dimension (Fig. 5-6), a securing feature (11, 12, 13) to secure the tubing in the curved channel, a tubing (1) having a diameter substantially equal to the interior dimension of the channel (Fig. 7-8); wherein the channel includes a straight portion (11-13) and a curved portion (14, 15), and the channel portions defines a channel, in a complementary manner, the shape of the tubing (col. 4, lines 54-58).

In regard to claims 3-4 and 12, because the pipe is plastic, it should have a flexed dimension and non-flexed dimension depending on the applied force or temperature. However, the dimension of the pipe have little or no weight in determine the patentability of the track system. “Expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining patentability of the apparatus claim.” Ex parte Thibault, 164 USPQ 666, 667 (Bd. App. 1969).

Furthermore, “[i]nclusion of material or article worked upon by a structure being claimed does not impart patentability to the claims.” In re Young, 75 F.2d 966, 25 USPQ 69 (CCPA 1935) (as restated in In re Otto, 312 F.2d 937, 136 USPQ 458, 459 (CCPA 1963)).

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5. Claims 1-4, 6-12 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Janosco (5,125,825).

Janosco teaches a plastic pipe bender, comprising a channel (40, 26, 28) having a curved cross section and an interior dimension, a securing feature (24) and a pipe (10), wherein the track portion includes at least one straight track (38, 58) and at least one curved track (32, 48) and the diameter of the curved track is approximate the outer diameter of the pipe (col. 2, lines 51-58) and contact approximate 180° of the pipe, the pipe is locally heated and rapid quenching at a predetermined bend areas (col. 3, lines 43-48).

In regard to claims 3-4 and 12, because the pipe is plastic, it should have a flexed dimension and non-flexed dimension depending on the applied force or temperature. However, the dimension of the pipe has little or no weight in determine the patentability of the track system. "Expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining patentability of the apparatus claim." Ex parte Thibault, 164 USPQ 666, 667 (Bd. App. 1969).

Furthermore, "[i]nclusion of material or article worked upon by a structure being claimed does not impart patentability to the claims." In re Young, 75 F.2d 966, 25 USPQ 69 (CCPA 1935) (as restated in In re Otto, 312 F.2d 937, 136 USPQ 458, 459 (CCPA 1963)).

Allowable Subject Matter

6. Claims 5 and 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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7. The following is a statement of reasons for the indication of allowable subject matter: the prior art fails to teach or suggest a track assembly for bending a tubing, comprising a pair of opposing flanges curved in opposite direction for securing the tubing.


8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thu Khanh T. Nguyen whose telephone number is 703-305-7167.

The examiner can normally be reached on Monday- Friday, 6:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L Walker can be reached on 703-308-0457. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

TN


ROBERT DAVIS
PRIMARY EXAMINER
GROUP 1300 / 205
9/29/03